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KEVIN MERCADO RIVERA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

KEVIN MERCADO RIVERA, an
individual,

Plaintiff,

vs.

DELTA MUFFLER SHOP, an entity of
unknown form; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 25STCV03861

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM
OVERTIME TIME WAGES (Cal. Labor
Code §§ 510, 1194, 1198; IWC Wage Order
No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGES
(Cal. Labor Code §§1194, 1194.2, 1997,
1197.1, 1198; IWC Wage Order No. 9)**
- 3. FAILURE TO PROVIDE MEAL
PERIODS (Cal. Labor Code § 226.7; IWC
Wage Order No. 9);**
- 4. FAILURE TO PROVIDE REST
PERIODS (Cal. Labor Code § 226.7; IWC
Wage Order No. 9);**
- 5. WAITING TIME PENALTIES (Cal. Labor
Code §226; IWC Wage Order No. 9);**
- 6. FAILURE TO PAY WAGES DUE UPON
TERMINATION (Cal. Labor Code §§201-
203);**
- 7. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. Labor Code §2802);**
- 8. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. Labor
Code §1198.5); and**
- 9. UNFAIR COMPETITION (Cal. Bus. & Prof.
Code §§17200 et seq.**

DEMAND FOR A JURY TRIAL

Kevin Mercado Rivera ("Plaintiff") alleges the following:

PARTIES

1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and a resident of Long Beach, California.

2. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Delta Muffler Shop ("DMS" or "Defendant") is, and at all times mentioned herein was, an entity of unknown form, with a principal place of business at 1057 N. Avalon Blvd., Wilmington, CA 90744. Defendant has been authorized to do business and has been doing business in the County of Los Angeles.

3. Starting on or about March 6, 2023 and continuing through January 2, 2025, Defendant DMS employed Plaintiff as a General Worker.

4. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such fictitious names and capacities. Plaintiff will amend her Complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes and thereon alleges that at all times relevant, each of these fictitiously named DOE Defendants was an individual person who owned, controlled, or managed the business for which Plaintiff worked and/or who directly or indirectly exercised operational control over the wages, hours, and working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions with the remaining Defendants, and acted on behalf of the remaining Defendants, which included decision-making responsibility for, and establishment of, illegal payroll practices and policies for Defendants which have damaged Plaintiff and others similarly situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are "employers" as a matter of law and personally liable on the causes of action alleged herein pursuant to Labor Code §558, as well as other California wage and hour laws and regulations as alleged herein.

5. Plaintiff is informed and believes and thereon alleges that at least some of the Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,

1 corporations or other business entities organized and existing under and by virtue of the laws
2 of the State of California, and are/were qualified to transact and conduct business in the State
3 of California, and did transact and conduct business in the State of California, and are thus
4 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
5 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
6 pay employees by illegal payroll practices and policies in the County of Los Angeles.

7 6. Plaintiff is informed and believes and thereon alleges, that at all times relevant
8 herein, the named defendants and at least some of DOES 1 through 100 were the agents,
9 employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and
10 in doing the things herein alleged, were acting within the course and scope of such agency or
11 employment, and with the approval and ratification of each of the other defendants.

12 7. Plaintiff is informed and believes and thereon alleges that Defendants, and each
13 of them, directly employed or exercised control over his wages, hours, or working conditions.

14 8. Plaintiff is further informed and believes, and thereon alleges, that each of the
15 fictitiously named Defendants aided and assisted the named Defendants in committing the
16 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
17 defendant.

18 9. At all times relevant herein, each of the named defendants was the agent of the
19 other named defendants and in doing the things alleged herein, was acting within the course
20 and scope of said agency.

21 10. Pursuant to the California Labor Code, on or about February 11, 2025, Plaintiff
22 filed a notice with Labor and Workforce Development Agency (LWDA) of his intent to
23 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
24 Plaintiff further reserves the right to amend this Complaint once he completes and complies
25 with the provisions under the law.

26 JURISDICTION AND VENUE

27 11. This Court has jurisdiction over this Complaint under Code of Civil Procedure
28

1 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
2 *Professions Code* §§ 17200 *et seq.*

3 12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
4 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
5 herein, occurred in the County of Los Angeles and because Defendant DMS owned and
6 operated their business in the County of Los Angeles.

7 **DEFENDANT DID NOT PROPERLY COMPENSATE PLAINTIFF**

8 13. While employed by Defendant, Plaintiff was paid \$160.00 per day no matter
9 how many hours he worked. Plaintiff worked 9.5 or more hours per day, 5 days per week.
10 Plaintiff performed welding, cleaned and organized.

11 14. The employment by Defendant of Plaintiff is governed by Industrial Welfare
12 Commission Wage Order No. 9, which covers those persons employed in the transportation
13 industry.

14 15. Under California law, non-exempt employees as defined by Wage Order No. 9,
15 are entitled to premium wages for overtime worked.

16 16. At all times relevant herein, Plaintiff routinely worked overtime hours such that
17 he was due pay at overtime rates. Monies for unpaid overtime remain due and owing. Plaintiff
18 was paid \$160.00 hours per day even when he worked overtime. He typically worked 5 hours
19 of overtime every week. Further, Plaintiff engaged in off the clock work when he was asked to
20 arrive at work earlier than his scheduled shift.

21 17. Defendant failed to pay Plaintiff minimum wages due to their failure to afford
22 meal/rest breaks.

23 18. As a result of Defendant's failure to pay Plaintiff at required overtime and
24 minimum wage rates and failure to afford meal/rest breaks, the wage statements issued to him
25 did not comply with *Labor Code* §226 and California Industrial Welfare Commission ("IWC")
26 Wage Order No. 9 in that they did not accurately reflect all wages earned and due and owing.

27 19. Defendant failed to afford Plaintiff meal breaks.

28 20. Defendant failed to afford Plaintiff rest breaks.

1 21. Defendant failed to pay Plaintiff all wages on termination of his employment.

2 22. Defendant failed to reimburse Plaintiff for his necessary business expenses such
3 as use of his personal vehicle and cell phone.

4 23. Defendant failed to provide Plaintiff with his requested employment records.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME WAGES**

7 **(Labor Code §§510, 1194, 1198 and Wage Order No. 9 By Plaintiff Against Defendant**
8 **and Does 1-100)**

9 24. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 25. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
12 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to
13 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
14 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
15 hours on the seventh (7th) consecutive day of any work week.

16 26. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
17 who had not been paid overtime compensation could recover the unpaid balance of the full
18 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
19 fees and costs of suit.

20 27. California Labor Code section 1198 provides:

21 The maximum hours of work and the standard conditions of labor fixed by the
22 commission shall be the maximum hours of work and the standard conditions
23 of labor for employees. The employment of any employee for longer hours than
24 those fixed by the order or under conditions of labor prohibited by the order is
25 unlawful.

26 28. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
27 hours in any workday is permissible provided the employee is compensated for such overtime
28 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all

1 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
2 workday...”

3 29. California Labor Code section 558 provides in pertinent part:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the
7 Industrial Welfare Commission shall be subject to a civil penalty as
8 follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid
15 wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

18 (c) The civil penalties provided for in this section are in addition to any
19 other civil or criminal penalty provided by law.

20 30. Plaintiff worked 9.5 or more hours per day, 5 days per week. Throughout
21 Plaintiff's employment, Defendant failed and refused to properly pay overtime time
22 compensation to Plaintiff as required by law.

23 31. Plaintiff worked approximately 5 hours per week of overtime. Plaintiff was not
24 paid overtime that was due to him. Plaintiff was paid \$160.00 per day no matter how many
25 hours he worked. At times, Plaintiff was asked to engage in off the clock work since he was
26 required to arrive at work early, prior to the start of his shift. However, Plaintiff was not paid
27 for his off the clock work.

28 32. The foregoing overtime compensation is owed and unpaid. As a direct and
proximate result of Defendant's failure and refusal to pay overtime time, Plaintiff suffered
damages in the amount of at least \$118,080.00, according to proof at trial.

1 33. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime wages
2 against employers and those individuals acting in their behalf. Plaintiff requests that this Court
3 assess said penalty against Defendant in an amount to be proven at trial.

4 34. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
5 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover his attorneys'
6 fees, costs and interest.

7 **SECOND CAUSE OF ACTION**

8 **FOR FAILURE TO PAY MINIMUM WAGES**

9 **(IWC Wage Order No. 9; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
10 **Against Defendant and Does 1 through 100)**

11 35. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 36. Labor Code § 1194(a) states: "Notwithstanding any agreement to work for a
14 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid
16 balance of the full amount of this minimum wage or overtime compensation, including interest
17 thereon, reasonable attorney's fees, and costs of suit."

18 37. *Labor Code* § 1197 states the California requirement that employees must be
19 paid at least the minimum wage fixed by the Commission, and any payment of less than the
20 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
21 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
22 the full amount of this minimum wage." IWC Wage Order No. 9-2001 also obligates
23 employers to pay each employee minimum wages for all hours worked. These minimum wage
24 standards apply to each hour employees worked for which they were not paid. Therefore, an
25 employer's failure to pay for any particular hour of time worked by an employee is unlawful,
26 even if averaging an employee's total pay over all hours worked, paid or not, results in an
27 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
28 324 (2005).

1 38. Pursuant to Wage Order No. 9, Defendant is required to pay Plaintiff for all
2 hours worked, meaning the time during which an employee is subject to the control of an
3 employer, including all the time the employee is suffered or permitted to work, whether or not
4 required to do so.

5 39. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
6 and the standard conditions of labor fixed by the commission shall be the maximum hours of
7 work and the standard conditions of labor for employees. The employment of any employee for
8 longer hours than those fixed by the order or under conditions of labor prohibited by the order
9 is unlawful.”

10 40. Defendant failed to satisfy minimum wage requirements because they failed to
11 afford meal/rest breaks resulting in failure to compensate Plaintiff properly for “all hours
12 worked” and consequently underpaid Plaintiff for the actual hours Plaintiff worked in violation
13 of *Labor Code* §§ 1197, 1198 and Wage Order No. 9.

14 41. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
15 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
16 *Code* § 1194. Where an employee, such as Plaintiff, is not paid for all hours worked under
17 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
18 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
19 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
20 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
21 minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
22 (N.D. Cal. 2016).

23 42. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
24 of compensation due and owing to him as a direct result of Defendant’s unlawful acts and
25 Labor Code violations in an amount to be shown according to proof at trial and within the
26 jurisdictional limitations of this Court.

27 43. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
28 wages against employers and those individuals acting in their behalf. Plaintiff requests that this

1 Court assess said penalty against Defendant in an amount within the jurisdiction of this Court,
2 to be proven at trial.

3 44. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff is
4 entitled to recover the unpaid balances of the minimum wages Defendant owes him, plus
5 interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

6 45. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
7 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

8 **THIRD CAUSE OF ACTION**

9 **FOR FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED**

10 **(Labor Code §§ 226.7, 512, IWC Wage Order No. 9 By Plaintiff Against Defendant and**
11 **Does 1 through 100)**

12 46. Plaintiff realleges and incorporates by reference all of the allegations set forth in
13 this Complaint.

14 47. California Labor Code §226.7(a) prohibits an employer from requiring an
15 employee to work during any meal period mandated by an applicable Industrial Wage Order.
16 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
17 employee to work during a meal or rest break or recovery period mandated pursuant to an
18 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
19 Commission..."

20 48. California Labor Code §1198 makes unlawful the employment of an employee
21 under conditions the IWC prohibits.

22 49. IWC Wage Order No. 9 provides, in relevant part: "No employer shall employ
23 any person for a work period of more than five (5) hours without a meal period of not less than
24 30-minutes, except that when a work period of not more than six (6) hours will complete the
25 day's work the meal period may be waived by mutual consent of the employer and the
26 employee."

27 //

28 //

1 50. Wage Order No. 9 further provides, in relevant part: "Unless the employee is
2 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
3 duty' meal period and counted as time worked."

4 51. Section 512(a) of the California Labor Code provides, in relevant part, that:
5 An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less
7 than 30-minutes, except that if the total work period per day of the employee is
8 no more than six hours, the meal period may be waived by mutual consent of
9 both the employer and employee. An employer may not employ an employee for
10 a work period of more than 10 hours per day without providing the employee
11 with a second meal period of not less than 30-minutes, except that if the total
12 hours worked is no more than 12 hours, the second meal period may be waived
13 by mutual consent of the employer and the employee only if the first meal
14 period was not waived.

15 52. The Labor Code and Wage Order provisions cited above require California
16 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
17 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
18 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
19 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
20 the fifth hour of their shifts.

21 53. Defendant violated Labor Code § 512 and IWC Wage Order No. 9 by failing to
22 provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff was never
23 afforded any meal breaks.

24 54. Defendant further violated IWC Wage Order No. 9 and Labor Code
25 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
26 of pay for each workday that the meal period was not provided, in an amount within the
27 jurisdiction of this Court, according to proof. This amount remains owed and unpaid.

28

1 55. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
2 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
3 § 226.7(b).

4 56. As a direct and proximate result of Defendant's unlawful conduct as alleged
5 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
6 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
7 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's
8 violations of the California Labor Code and Wage Order No. 9.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST BREAKS**

11 **(Labor Code §226.7; IWC Wage Order No. 9– By Plaintiff Against Defendant Does 1**
12 **through 100)**

13 57. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 58. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall
16 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
17 per four hours of work, or major fraction thereof.

18 59. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer
19 fails to provide an employee with rest periods in accordance with those provisions, the
20 employer shall pay the employee one hour of pay at the employee's regular rate of
21 compensation for each workday that the rest periods were not so provided.

22 60. Defendant has intentionally and improperly denied rest periods to Plaintiff in
23 violation of Labor Code § 226.7 and IWC Wage Order No. 9.

24 61. At all times relevant hereto, Plaintiff has worked 9.5 or more hours daily.

25 62. At all times relevant hereto, Defendant failed to provide rest periods as required
26 by Labor Code § 226.7 and IWC Wage Order No. 9.

27

28

1 63. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff,
2 Plaintiff has suffered, and will continue to suffer, damages in an amount within the jurisdiction
3 of this Court, according to proof at trial.

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Labor Code §226 By Plaintiff Against Defendant and Does 1 through 100)**

7 64. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this Complaint.

9 65. At all times relevant hereto, Defendant failed to issue payrolls statements to
10 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
11 not properly and accurately itemize the number of hours Plaintiff worked at the effective
12 regular rates of pay and the effective overtime rates of pay, minimum wages and premium pay
13 for meal/rest breaks not compliant.

14 66. DMS knowingly and intentionally failed to comply with *Labor Code* §226(a),
15 causing damage to Plaintiff. These damages, including but not limited to, costs expended
16 calculating the actual hours worked and the amount of employment taxes which were not
17 properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff
18 elects to recover liquidated damages of \$50.00 for the initial pay period in which the violations
19 occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to *Labor Code* §
20 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

21 67. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
22 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

23 **SIXTH CAUSE OF ACTION**

24 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

25 **(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)**

26 68. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.
28

1 69. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
2 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
3 from employment, unpaid wages are due and payable within 72 hours of resignation.

4 70. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
5 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
6 paid, not to exceed thirty days.

7 71. Plaintiff was discharged from Defendant's employ and Defendant willfully
8 failed to pay Plaintiff wages due him.

9 72. Defendant wrongfully terminated Plaintiff on January 2, 2025, yet failed to pay
10 him wages due to him.

11 73. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
12 he was not timely paid, not to exceed 30 days' wages.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 **(Cal. Labor Code §2802 By Plaintiff Against Defendant and Does 1 through 100)**

16 74. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 75. Labor Code §2802 requires employers to indemnify employees for all necessary
19 expenditures incurred by employees in the discharge of his duties.

20 76. At all times relevant herein, Defendant was aware that Plaintiff was using his
21 cell phone and vehicle for business, but failed to indemnify Plaintiff for all his business-related
22 expenses, including wear and tear expenses, in accordance with Labor Code §2802.

23 77. As a result of Defendant's conduct, Plaintiff suffered damages in an amount,
24 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
25 incurred in the discharge of his duties.

26 78. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
27 her unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

28

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

3 **(Cal. Labor Code §1198.5 By Plaintiff Against Defendant and Does 1 through 100)**

4 79. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 80. California Labor Code Section 1198.5 provides:

7 (a) Every current and former employee, or his or her representative, has the right
8 to inspect and receive a copy of the personnel records that the employer
9 maintains relating to the employee's performance or to any grievance concerning
10 the employee.

11 (b) The employer shall make the contents of those personnel records available
12 for inspection to the current or former employee, or his or her representative, at
13 reasonable intervals and at reasonable times, but not later than 30 calendar days
14 from the date the employer receives a written request, unless the current or
15 former employee, or his or her representative, and the employer agree in writing
16 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
17 date does not exceed 35 calendar days from the employer's receipt of the written
18 request to inspect the records. Upon a written request from a current or former
19 employee, or his or her representative, the employer shall also provide a copy of
20 the personnel records,... later than 30 calendar days from the date the employer
21 receives the request...

22 (k) If an employer fails to permit a current or former employee, or his or her
23 representative, to inspect or copy personnel records within the times specified I
24 this section... the current or former employee may recover a penalty of seven
25 hundred fifty dollars (\$750) from the employer.

26 (l) A current or former employee may also bring an action for injunctive relief
27 to obtain compliance with this section, and may recover costs and reasonable
28 attorney's fees in such an action.

81. Additionally, pursuant to Wage Order No. 9, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

82. On or about February 11, 2025, Plaintiff's counsel issued a written request to DMS for copies of his personnel records.

83. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and DMS did not enter into an agreement to enlarge the time for DMS's compliance, and DMS has failed and refused to permit Plaintiff copies of his records.

84. As a direct result and consequence of DMS's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating DMS's compliance. Plaintiff has suffered and will suffer harm as a result of DMS's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon DMS's violation of §1198.5.

NINTH CAUSE OF ACTION

FOR UNFAIR COMPETITION

(Business & Professions Code §§ 17200 et seq. By Plaintiff Against Defendant and Does 1 through 100)

85. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

86. *Business & Professions Code* §§ 17200 *et seq.* prohibit acts of unfair competition, which mean and include “unlawful and unfair business practices.”

87. Defendant's conduct as alleged herein has been and continues to be unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff is a "person" within the meaning of *Business and Professions Code* § 17204 and therefore has standing to bring this suit for restitution.

1 88. The prompt payment of overtime, minimum wages, affording of meal/rest
2 breaks and reimbursement of business expenses, are fundamental public policies of California.
3 It also is the public policy of California to enforce minimum labor standards to ensure that
4 employees are not required to or permitted to work under substandard and unlawful conditions
5 and to protect those employers who comply with the law from losing competitive advantage to
6 other employers who fail to comply with labor standards and requirements.
7

8 89. Through the conduct alleged herein, Defendant acted contrary to these public
9 policies and have thus engaged in unlawful and/or unfair business practices in violation of
10 *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and
11 privileges guaranteed to employees under California law.

12 90. Defendant regularly and routinely violated the following statutes and regulations
13 with respect to Plaintiff:

- 14 (a) *Labor Code* §§ 510, 1194 and 1198 and IWC Wage Order No. 9 as
15 amended (failure to pay overtime);
- 16 (b) *Labor Code* §§ 1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order
17 No. 9 as amended (failure to pay minimum wage);
- 18 (c) *Labor Code* §226 (failure to afford meal breaks);
- 19 (d) *Labor Code* §226 (failure to afford rest breaks);
- 20 (e) *Labor Code* § 226 (failure to provide accurate wage statements to
21 employees at the time of payment of wages);
- 22 (f) *Labor Code* §§ 201-203 (failure to pay wages on termination);
- 23 (g) *Labor Code* §2802 (failure to reimburse business expenses); and
- 24 (f) *Labor Code* §1198.5 (failure to allow inspection of employment
25 records).

26 91. By engaging in these business practices, which are unfair business practices
27 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendant DMS harmed
28

1 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code* §
2 17203, Plaintiff is entitled to obtain restitution of these funds.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
5 and against Defendant as follows:

6 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff, in
7 the amount of at least \$118,080, according to proof;

8 2. For compensatory damages in the amount of unpaid minimum wages due to
9 Plaintiff, in the amount of at least \$118,080, according to proof;

10 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
11 workday that a meal and/or rest period was not provided;

12 4. For payment of unpaid wages in accordance with California labor and
13 employment law;

14 5. For an award of consequential damages in Plaintiff's favor and against
15 Defendant, in an amount to be proven at trial;

16 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

17 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
18 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;

19 8. For compensatory damages in the amount of Plaintiff's out of pocket expenses
20 and/or reimbursement of monies incurred while performing Defendants' business-related
21 duties, plus interest, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

22 9. Pursuant to *Labor Code* § 203, for an additional sum according to proof equal of
23 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;

24 10. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
25 §203, in an amount equal to his respective daily rates of pay at the time of termination or
26 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
27 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
28 days' pay, according to proof;

1 11. For prejudgment interest accrued on all due and unpaid overtime and minimum
2 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
3 1194(a), according to proof;

4 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 210, according
5 to proof;

6 13. For reasonable costs, including attorneys' fees, in an amount according to proof
7 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 218.6, 1198.5(1), 2802 and/or Cal.
8 Code of Civ. Proc. §1021.5;

9 14. For an award of restitution of wages to Plaintiff in an amount equal to the
10 amount of wages owed and unpaid, according to proof;

11 15. For injunctive relief ordering the continuing unfair business acts and practices to
12 cease, as the Court deems just and proper;

13 16. For other injunctive relief ordering Defendant to notify Plaintiff that he has not
14 been paid the proper amounts in accordance with California law;

15 17. For injunctive relief requiring Defendant DMS to comply with Labor Code
16 1198.5(b)(1);

17 18. For punitive and exemplary damages in a sum to be determined at trial; and

18 19. For such other and further relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff Kevin Mercado Rivera hereby respectfully requests a trial by jury for all claims
21 and issues raised in his Complaint that may be entitled to a jury trial.

22
23 LIPELES LAW GROUP, APC

24 Date: February 11, 2025

25
26 By: Shana Villoria
27 Shana L. Villoria
28 Attorneys for Plaintiff
 Kevin Mercado Rivera